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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,655	06/11/2007	Lena EhmSEN	2003035-US	9261
69289 7590 02/22/2010 COLOPLAST A/S Attention: Corporate Patents Holtedam 1 DK-3050 Humleback, DENMARK				
EXAMINER				
HALE, GLORIA M				
ART UNIT		PAPER NUMBER		
3765				
NOTIFICATION DATE		DELIVERY MODE		
02/22/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patent@coloplast.com
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Office Action Summary

Application No.

10/588,655

Applicant(s)

EHMSEN, LENA

Examiner

Gloria Hale

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11-8-09.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/CD)
Paper No(s)/Mail Date 7-15-09
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In claims 1 and 12 the newly added limitation of a flexible protection element "fixed in place relative to the leg holes" is new matter. IT is not clear as to how the flexible protection element is fixed in place relative to the leg holes. Applicant's original specification discloses the element as being fixed to the end of the crotch portion.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 12 are unclear for the same reasons as stated above.

However, the claims as best understood, have been examined on their merits.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7 and 9-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Stevenson (US 6964065).

Stevenson discloses an underpant structure comprising a front part 2, a back part 6 and a crotch 12, two leg holes 8 and 10, a releasable connection 20 with two parts 14 and 22 that connect the crotch part 12 to the front part and form an edge portion of each of the leg holes at 16, 18 and that are separated when in an open condition to form an opening in the crotch area. The releasable connection 20 extends from one leg hole to the other and there is a flexible protection element 16, 18. The leg holes are part of the opening formed in the crotch area in the open condition as seen in figures 1A-1C. The flexible protection element is attached to the outer overlapping part of the releasable connection 20 and folds around the edge portion of the at least one leg hole. The flexible protection element 16, 18 is formed of the claimed materials (any other material) since it is a band. (See ocl. 3, lines 27-35). The element is considered a ribbon since it is a band and as seen in the figures 1 A-1C. The flexible protection element is an elongated loop of material as seen in figures 1 A-1C. It includes two separate sections 16, 18 as claimed. The element is secured to an outer side of the underpants by fastening element 20. The narrow elongated strip is of a material

configured to wrap around and at least partly cover the edge portion of at least one of the leg holes, is of a soft material of those listed, and is of two separate sections 16, 18 as claimed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stevenson (US 6964065).

Stevenson discloses the invention substantially as claimed except for the specific flexible protection element 16, 18 ribbon length and the loop length as claimed. The bands of Stevenson appear to be within the claimed ranges. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the length of the ribbon and loops to be within the claimed ranges since such a length is necessary to connect the ribbons about the leg hole edges as claimed. Finding the length necessary to connect the crotch portion to the underpart front portion and to fold over the edges of the leg holes would have been an obvious modification found through routine experimentation. (See Stevenson, figures 1A-1C).

Response to Arguments

Applicant's arguments filed 11-08-09 have been fully considered but they are not persuasive. The newly added limitation to claims 1 and 12 appears to be new matter as

discussed above. It is not clear as to how the element is fixed in relation to the leg holes. It appears that applicant's element is fixed in relation to the crotch portion edge. The elements then extend to the edge of the leg opening portion but are not fixed to the other side of the leg opening. The original specification did not explain how or that the loop protective element is fixed in relation to the leg opening as now claimed and therefore it is new matter and unclear. The portions of Stevenson extend and fold over and are fixed when folded over the leg opening as broadly claimed. Therefore, the rejection under 35 USC 102(b) and 103 with Stevenson stand.

The foreign references were not submitted with the IDS (of 7-15-09) and are not considered. Please submit the copies of the foreign references with another IDS (PTO-1449) for consideration.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 571-272-4984. The examiner can normally be reached on Mon.-Thurs...

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gloria Hale/
Primary Examiner, Art Unit 3765
